

Prosecution Challenges in Environmental Offenses: A Critical Analysis of Criminal Sanctions Under the Environmental Protection Act, 1986

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Abstract

Environmental offenses present a severe and escalating risk to public health, ecological stability, and sustainable economic development. While India possesses a comprehensive legislative framework designed to protect the environment, the practical implementation of criminal sanctions against corporate and individual offenders remains fraught with systemic legal obstacles. This paper critically evaluates the prosecution challenges associated with environmental crimes, placing a specific focus on the Environmental Protection Act, 1986. It is observed that despite the existence of stringent penal provisions outlined in Sections 15, 16, and 19 of the Act, successful convictions are exceedingly rare. An in-depth doctrinal analysis of the procedural barriers, evidentiary complexities, corporate veil structures, and institutional limitations reveals that the existing statutory mechanisms frequently fail to create a credible deterrent. The study highlights the heavy reliance on judicial activism to bridge enforcement gaps and proposes concrete legislative and institutional reforms—including the recognition of "ecocide" and the establishment of specialized environmental criminal courts—to strengthen the prosecution framework.

Keywords: Environmental Offenses, Criminal Sanctions, Environmental Protection Act 1986, Corporate Liability, Public Interest Litigation

1. Introduction

The protection of the natural environment has emerged as a central concern in modern legal and policy discussions, largely driven by the adverse effects of rapid urbanization, industrial expansion, and unchecked resource exploitation. Environmental degradation not only disrupts delicate ecological balances but also severely threatens public health and sustainable developmental goals. In India, environmental conservation is deeply embedded in the constitutional framework. The 42nd Amendment Act of 1976 introduced Articles 48A and 51A(g), which place a dual responsibility on both the State and its citizens to actively protect and improve the natural surroundings.

To carry out these constitutional mandates, the legislature has enacted various specific statutes over the years. The most significant of these is the "*Environmental Protection Act of 1986 (EPA)*". This legislation,

established in the tragic aftermath of the Bhopal Gas disaster, serves as a comprehensive framework. It provides extensive power to the Central Government to regulate industrial emissions, establish rigorous environmental standards, and enact harsh criminal penalties for violations.

However, a noticeable and persistent gap exists between legislative intent and ground-level execution. Regulatory bodies and investigating agencies struggle continuously with procedural delays, a chronic lack of technical expertise, and immense difficulties in gathering admissible scientific evidence. Consequently, the conviction rate for environmental violations remains exceptionally low, which systematically strips the criminal sanctions of their intended deterrent value. This research examines the core obstacles faced by prosecuting authorities and evaluates the practical effectiveness of the current penal provisions.

2. The Legal Architecture of Environmental Protection

The evolution of environmental law in India signifies a gradual yet significant shift from formally colonial resource-extraction policies to contemporary, comprehensive ecological conservation. In the pre-independence period, legislation like the Indian Forest Act of 1927 and the Factories Act of 1948 was not intended to safeguard the environment. They were primarily designed to regulate timber extraction for colonial economic interests and to address fundamental workplace sanitation.

A paradigm shift occurred internationally and domestically following the 1972 United Nations Conference on the Human Environment held in Stockholm. Feeling the pressure to internalize these international obligations, the Indian legislature enacted specific, targeted statutes. This led to the creation of the “*Water (Prevention and Control of Pollution) Act, 1974*”, and the “*Air (Prevention and Control of Pollution) Act, 1981*”. While these pioneering laws successfully established the “*Central Pollution Control Board (CPCB)*” and “*State Pollution Control Boards (SPCBs)*”, they operated in isolated silos. They treated air and water as entirely separate entities and lacked the severe punitive measures required to deter large corporate polluters.

The enactment of the Environmental Protection Act, 1986, marked a watershed moment. It moved the legal system away from fragmented regulations toward an integrated approach capable of addressing hazardous substances and preventing future industrial disasters. It provided a holistic definition of the environment and centralized significant regulatory power to ensure swift action.

3. Prosecution Mechanisms and Criminal Sanctions.

Unlike earlier civil liability laws, the Environmental Protection Act introduced significantly clearer and stricter penal provisions designed to treat environmental harm as a serious socio-economic offense.

3.1 Penalty for Contravention Section 15 forms the core punitive element of the Act. It stipulates that any person who fails to comply with or violates the provisions or regulations of the Act is subject to imprisonment for up to five years, a fine of up to one lakh rupees, or both penalties. The statute acknowledges that environmental damage is frequently a continuous process, permitting supplementary fines of up to five thousand rupees for each day the violation continues after conviction. Furthermore, if the contravention continues beyond one year after conviction, the offender faces enhanced imprisonment extending to seven years, reflecting a legislative intent to punish chronic non-compliance severely.

3.2 Corporate Criminal Liability Given that modern environmental degradation is predominantly a corporate enterprise, holding artificial legal entities accountable is critical. Since a corporation itself cannot be imprisoned, Section 16 of the EPA deals specifically with offenses by companies. It pierces the

corporate veil by establishing vicarious criminal liability. Every person who was in charge of and responsible for the company for the conduct of its business at the time of the offense is deemed guilty. This provision ensures that directors, managers, and secretaries who authorize cost-cutting measures leading to pollution face personal legal jeopardy. The burden of proof then shifts to the accused officer to prove that the offense was committed without their knowledge or that they exercised all due diligence to prevent it.

3.3 Offenses by Government Departments Demonstrating the principle of equality before the law, Section 17 extends criminal liability to government agencies. If a state department commits an environmental contravention, the Head of the Department is deemed guilty. This is a highly crucial provision, as municipal bodies and public sector undertakings in India are frequently major sources of untreated sewage and large-scale industrial pollution.

4. Barriers to Effective Prosecution

Despite the presence of a robust statutory framework, securing criminal convictions for environmental crimes is severely hindered by deep-rooted procedural, evidentiary, and institutional flaws. Environmental crimes are essentially white-collar crimes; they feature diffused victimization and vast scientific complexities that regular criminal justice systems struggle to process.

4.1 Procedural Asphyxiation and Statutory Hurdles A primary and highly criticized barrier to prosecution is Section 19 of the Environmental Protection Act. This section dictates that a court can only take cognizance of an offense upon a complaint made by a designated government authority or by a private citizen who has provided a mandatory 60-day notice of their intention to file a complaint. It is observed that this statutory "cooling-off" period severely prejudices cases involving dynamic environmental crimes, such as illegal effluent discharge. It provides offending industries a generous 60-day window to halt operations temporarily, clean the immediate vicinity, or manipulate data. By the time a magistrate is statutorily permitted to intervene, the core evidence is frequently destroyed.

Furthermore, prosecuting state actors faces immense roadblocks due to Section 197 of the "Code of Criminal Procedure, 1973 (CrPC)". This procedural shield mandates prior governmental sanction before a public servant can be prosecuted for acts committed during the discharge of official duties. Regulatory boards frequently wait years for these sanctions from state governments, resulting in widespread institutional impunity for state-sponsored ecological degradation.

4.2 Corporate Accountability and the Officer in Default While Section 16 introduces vicarious liability, actual prosecution is fraught with challenges. The prosecution must definitively prove which specific director or manager was the "officer in default" at the exact time the offense occurred. Large corporate structures are deliberately obfuscated through holding companies and layered management hierarchies. In *U.P. Pollution Control Board v. Modi Distillery*, the Supreme Court (SC) recognized the significant challenges regulatory boards confront in identifying the directing mind of a corporation. Under-resourced pollution boards often fail to pinpoint the exact responsible individuals, allowing corporate executives to successfully evade personal liability.

4.3 The Evidentiary Insurmountability Criminal jurisprudence operates on the foundational principle that the accused must be proven guilty "beyond a reasonable doubt". However, establishing an incontrovertible causal nexus between a specific factory's emissions and local environmental harm is scientifically Herculean due to multiple intervening variables.

Additionally, the collection of scientific evidence is governed by rigid statutory protocols. For instance, Section 21 of the Water Act dictates a meticulous, multi-step procedure for taking and sealing effluent samples. The Indian judiciary regards these safeguards as obligatory. In the pivotal case of *Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Water Pollution*, a corporation was exonerated solely due to the officials' failure to analyze the sample within the mandated statutory time limits. Minor procedural lapses by overburdened engineers routinely result in catastrophic evidentiary failures in court.

4.4 Institutional Paralysis and Regulatory Capture The enforcement of these laws relies heavily on the SPCBs and the CPCB. However, these institutions suffer from a deeply flawed financial model. A significant portion of SPCB operational revenue is generated from the "Consent to Establish" and "Consent to Operate" fees paid by the very industries they are tasked to regulate. This creates a systemic conflict of interest, essentially a "pay-to-pollute" cycle, where closing a non-compliant industry leads to a direct loss of revenue for the regulatory board.

Moreover, the phenomenon of "regulatory capture" is highly prevalent. In *Techi Tagi Tara v. Rajendra Singh Bhandari*, the Supreme Court expressed grave concern that state governments routinely appoint political loyalists or generalist bureaucrats as PCB Chairpersons, rather than qualified environmental scientists. Lacking technical expertise and secure tenure, these officials are heavily hesitant to authorize the criminal prosecution of powerful industrial lobbies.

5. Judicial Approach and Evolving Jurisprudence

Faced with legislative lethargy, apathetic regulatory boards, and the insurmountable evidentiary hurdles of regular magistrate courts, a massive vacuum emerged in environmental governance. Consequently, the Indian higher judiciary stepped in to fill this void through profound judicial activism.

5.1 Constitutionalizing Environmental Law The most significant paradigm shift was the elevation of environmental protection from a statutory obligation to a fundamental human right. The SC cleverly broadened the scope of the Constitution's Article 21 (Right to Life). In the point of reference "*Subhash Kumar v. State of Bihar*" case, the Court declared that the right to a healthy environment, including clean air and water, is essential to life. The restrictive 60-day notice period required by Section 19 of the EPA was effectively avoided by this constitutionalization, which gave citizens the ability to directly approach the Supreme Court.

5.2 Public Interest Litigation (PIL) and Epistolary Jurisdiction The strict rule of locus standi—which dictates that only a directly aggrieved person can approach the court—was a major hurdle. The Supreme Court dismantled this barrier through Public Interest Litigation (PIL). Furthermore, the development of epistolary jurisdiction allowed courts to treat informal letters and newspaper reports as formal writ petitions. This meant environmentalists could initiate legal proceedings against corporate polluters without waiting for paralyzed SPCBs to act.

5.3 Evolution of Core Environmental Doctrines To overcome the strict evidentiary standards of criminal courts, the Supreme Court assimilated internationally recognized civil liability doctrines into Indian law.

1. **Absolute Liability:** In the aftermath of the Bhopal tragedy, the SC in "*M.C. Mehta v. Union of India*" established that any enterprise engaged in hazardous activity is "strictly and absolutely liable" to compensate for harm, removing the exceptions available under traditional English strict liability.

2. **Polluter Pays Principle:** In the “Bichhri Village case (Indian Council for Enviro-Legal Action v. Union of India)”, the Court ruled that the financial responsibility for restoring the degraded environment rests squarely on the polluting industry, regardless of whether a criminal conviction is secured.
3. **Precautionary Principle:** Adopted in “Vellore Citizens' Welfare Forum v. Union of India”, this principle reverses the burden of proof, forcing industrialists to scientifically prove their activities are environmentally benign before proceeding.
4. **Public Trust Doctrine:** Introduced in “M.C. Mehta v. Kamal Nath”, it holds that the State is merely a trustee of natural resources, preventing corrupt statutory boards from transferring them for private commercial exploitation.

5.4 Shift to Constitutional Torts and the NGT. Realizing that sending corporate directors to jail under Section 16 of the EPA was practically impossible, the courts utilized the concept of "Constitutional Torts". By imposing exemplary damages, the judiciary created a parallel enforcement mechanism that hit offenders financially. This culminated in the establishment of the “National Green Tribunal (NGT)” in 2010. While the NGT lacks jurisdiction to conduct regular criminal trials, its statutory mandate to apply the Polluter Pays and Precautionary principles has proven to be a far more potent deterrent than outdated criminal provisions.

6. Conclusion and Legislative Recommendations

The fundamental objective of environmental criminal law is to create a credible threat of sanction. However, statistical analysis from the National Crime Records Bureau reports confirms that the conviction rate remains stuck below 15%. The current system effectively subsidizes pollution, making it cheaper for an industry to pay a nominal fine after a decade of litigation than to install proper effluent treatment plants. Environmental criminal law has been reduced to symbolic legislation. To bridge the gap between ecological reality and legal formality, the following reforms are urgently proposed:

1. **Abolition of the "60-Day Notice" Barrier:** Section 19 of the EPA and Section 49 of the Water Act must be amended to allow for immediate "Citizens' Suit" provisions, empowering courts to take cognizance immediately upon receiving prima facie evidence of hazardous leaks.
2. **Statutory Recognition of Ecocide:** India should incorporate "Ecocide" as a grave criminal offense under the Bharatiya Nyaya Sanhita, applying to acts causing widespread, long-term environmental damage, carrying a mandatory minimum imprisonment of 10 years for corporate heads.
3. **Strict Liability in Criminal Law:** For environmental offenses involving hazardous substances, the law must move beyond requiring traditional mens rea. Once a toxic discharge is proven, intent should be presumed.
4. **An Independent Environmental Civil Service:** Based on the T.S.R. Subramanian Committee Report, a specialized Indian Environment Service should be created to ensure regulatory boards are led by trained professionals rather than generalist bureaucrats.
5. **A Non-Collateral Funding Model:** The funding of SPCBs must transition to a "Green Tax" model to break the pay-to-pollute cycle, ensuring regulators do not depend on the consent fees of the entities they police.
6. **Environmental Special Criminal Courts:** Parliament must exercise its power to establish specialized criminal courts at the district level, assisted by technical assessors to properly evaluate scientific evidence, bypassing the technical illiteracy of regular magistrate courts.

The time for regulatory leniency has expired. The transition from mere civil compensation to strict, enforceable criminal liability is the only viable path to safeguard the fundamental rights of future generations.

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